Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530,

Plaintiff,

v.

AGRI STATS, INC.
6510 Mutual Drive
Fort Wayne, IN 46825,

Defendant.

Civil Action No.:

COMPLAINT

For years, Agri Stats, Inc. has recruited the nation's largest meat processors to exchange detailed information about their prices, costs, and production plans. Each week, competing processors send competitively sensitive information from their internal accounting systems to Agri Stats. After auditing and standardizing these troves of data, Agri Stats creates and distributes comprehensive reports detailing competing processors' pricing, margins, inventories, and operations.

Agri Stats operates its information exchanges to promote total industry profits at the expense of competition. It does this by providing processors with unique insights about their competitors' production, costs, and pricing—and refusing to sell the same information to processors' customers, farmers, workers, or consumers. Agri Stats enables and

encourages processors to use its asymmetrical information exchanges to weaken competition, curb production, and increase prices for purchasers. And processors follow this advice—ultimately harming consumers. The Agri Stats model was so effective in encouraging anticompetitive price increases that a Tyson executive explained, "we not only have to increase our price but we also have to out run our competitors['] improvements."

Agri Stats' conduct is unlawful and must be enjoined. The United States brings this action for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, to stop Agri Stats' anticompetitive scheme and restore competition to heartland U.S. agriculture markets.

TABLE OF CONTENTS

I. INTRODUCTION

1.   Each day, U.S. meat processors produce millions of pounds of chicken, pork, and turkey—staples of many Americans' diets. These processors largely control the supply chains that deliver meat from farms to grocery stores and restaurants, including the processing facilities that turn live poultry and livestock into traditional meat products.

2.   Over the past two decades, Agri Stats has recruited and enabled all major U.S. chicken, pork, and turkey processors to exchange competitively sensitive information through its exclusive subscription and consulting business. Chicken, pork, and turkey processors that should be vigorous competitors have provided Agri Stats with detailed data about their current costs, output, and prices. Processors understand the competitive sensitivity of the information they provide to Agri Stats.

3.   Agri Stats then audits the data, manipulates it to facilitate comparisons, and distributes it back to processors in a variety of different reports, often less than a week after receiving the information. The result is thousands of pages of reports spanning the processors' operations—including reports covering live production, processing, sales, and profitability of the broiler chicken,[1] pork, and turkey industries. The loosely anonymized reports contain competitively sensitive information about each industry and, frequently, each processor's facilities operating in these industries. As former Agri Stats President

---

[1] "Broiler" chickens refer to chickens raised for meat consumption that are slaughtered before the age of 13 weeks.

1

Blair Snyder stated, "[I]t's like Agri Stats is doing the accounting for the whole industry .
. . ."

4.   By design, Agri Stats focuses on raising industry-wide profitability of the

meat industries it services, which can harm competition. Although it could be profitable

for a processor to increase production when its prices are below those of its competitors,

doing so would tend to lower industry profits; Agri Stats instead enables and encourages

processors to increase prices and restrict output to boost profits industry-wide. As one Agri

Stats employee stated, "A common saying in the Agri Stats circle is that 'you cannot

produce your way to the top . . . .'" Executives at some of the country's largest meat

processors testified that they could not recall any examples in which their companies used

Agri Stats information to lower their sales prices to gain market share. An executive at

Smithfield, a pork processor, summarized Agri Stats' consulting advice in four words:

"Just raise your price."

5.   Agri Stats designs its reports so that a processor does not need to

communicate directly with other processors to determine their intentions, but instead can

look at the reports to forecast what competitors will do. And processors pay Agri Stats

millions of dollars for these reports, which the processors in turn use to limit competition.

For example, Agri Stats provides weekly sales reports that compare the processor's prices

to national averages and ranks the processor's prices compared to the prices competitors

charged for the same products. Using these reports, processors target products priced low

compared to their competitors' products for price increases—a practice some processors

2

refer to as "chasing price" or "pricing with courage." A processor learns of these non-public opportunities only because Agri Stats collects competitively sensitive pricing information from nearly all other processors.

6.   Other Agri Stats reports provide processors with metrics allowing them to forecast and monitor competitor output and confidently restrain production when it is profitable to do so, which can lead to higher prices.[2] Even though Agri Stats masks some of the information it collects, processors receive enough detailed data to allow them to forecast the plans of competitors. For example, the former CEO of Sanderson Farms assured investors during a 2009 call that Sanderson could maintain its current production levels because information provided by Agri Stats confirmed that his competitors were not planning on increasing production, "It makes no sense for us to ramp up. . . . [P]eople are not planning on ramping up. I see a lot of information from Agri Stats that tells me that nobody's going to ramp up."

7.   Agri Stats shares information about upstream markets as well, including competitively senstitive information related to suppliers, service providers, and workers. Agri Stats provides processors with detailed information about how their competitors compensate workers, including wage rates, farmer (or grower) pay, and other compensation metrics. While the processors willingly share this information with each

---

[2] Higher prices refers to prices that are higher than what a purchaser would pay absent the anticompetitive behavior at issue. This may include, for example, stabilized prices that do not decrease as much as they would in a competitive market. Likewise, supply limitations may include maintaining a consistent supply or slowing the rate of supply increases.

other through Agri Stats, Agri Stats refuses to make the same information available to workers and farmers.

8.   To help enable processors to boost margins industry-wide rather than compete by lowering prices to increase sales, Agri Stats produces a profit margin report that allows competitors to evaluate their profit margin performance relative to competitors. Processors have then used this information to make executive bonus decisions. Such bonuses were not based on the firm's *total* profits, but were instead tied to the firm's profit *margin* relative to its competitors. Focusing on relative margins, rather than a processor's own profits, tends to maintain high industry prices and profits.

9.   Agri Stats refuses to make its reports available to meat purchasers and others in the protein supply chain, thereby strengthening the advantage processors gain by sharing information only with one another. As an Agri Stats employee explained to a restaurant group representative who sought access to Agri Stats data, "It would not be prudent for us to make this information available to non-users. Can you imagine if Tyson came in to negotiate with you and you started the conversation with, '[W]ell Agri Stats gave us profit information and it says . . . .' That would not be a good situation for us."

10.   Further, Agri Stats tells these processors *how* to use the information to weaken competition. Agri Stats sells consulting services to the processors and has advised nearly all of the major processors in the broiler chicken, pork, and turkey industries—often with individual employees advising several competing processors simultaneously. Accordingly, Agri Stats does not advise its customers to compete more vigorously against

4

each other or take sales from one another; rather it enables and encourages processors to raise total industry profits.

11.   Agri Stats has organized several anticompetitive information exchanges, padding its own pockets while its subscribing processors earn millions by using information exchanged through Agri Stats to suppress competition. Meanwhile, American consumers have paid higher prices for staple food items, including chicken, pork, and turkey. The United States seeks to stop these unlawful information exchanges.

II.   AGRI STATS AND ITS CO-CONSPIRATORS

12.   Founded in 1985, Agri Stats is an Indiana for-profit corporation that has operated a subscription and consulting service in numerous meat processing industries. From 2013 to 2018, Agri Stats was a subsidiary of Eli Lilly & Company. Eli Lilly spun off the company after private plaintiffs named Agri Stats as a defendant in multiple private antitrust class action lawsuits. Today, ███████████████████████████

███████████████████████████████████████

███████████████████████████████████████

███████████████████████████████████████ .

13.   Agri Stats owns Express Markets, Inc. ("EMI"), an Indiana for-profit corporation established in 2001. EMI operates out of the same building as, and shares staff with, Agri Stats. The two companies frequently operate interchangeably, and processors

refer to Agri Stats and EMI as "one and the same."[3] EMI provides forecasting and pricing

analyses for the broiler chicken, pork, turkey, egg, and beef industries that are typically

more aggregated than Agri Stats-branded reports and typically made available to non-

processor customers. Even so, EMI occasionally makes certain reports or information

available only to processors, just as Agri Stats does with its reports.

14.   Agri Stats' business model involves establishing and operating information

exchanges among direct competitors. In each industry where Agri Stats operates, Agri Stats

agrees with its subscribing processors, and the processors agree with each other, to use

Agri Stats to exchange competitively sensitive information. Agri Stats' co-conspirators in

each industry include:

- **Broiler Chicken:** Allen Harim Foods, LLC, Amick Farms, LLC ("Amick Farms"), Case Farms,[4] Norman W. Fries, Inc. (d/b/a Claxton Poultry Farms), Fieldale Farms Corp., Foster Poultry Farms ("Foster Farms"), George's,[5] Harrison Poultry, Inc., Holmes Foods, Inc., House of Raeford Farms, Inc. ("House of Raeford"), Koch Foods, Inc. ("Koch Foods"), Mar-Jac Poultry,[6] Mountaire,[7] O.K. Foods, Inc., Peco Foods, Inc., Perdue,[8] Pilgrim's Pride Corp. ("Pilgrim's"),

---

[3] A recent contract between Agri Stats and a large broiler processor stated that "Agri Stats offers EMI Price Discovery and Analytics," treating the companies as one.

[4] "Case Farms" refers collectively to the affiliated entities Case Foods, Inc., Case Farms, LLC, and Case Farms Processing, Inc.

[5] "George's" refers collectively to the affiliated entities George's, Inc. and George's Foods, LLC.

[6] "Mar-Jac Poultry" refers collectively to the affiliated entities Mar-Jac Poultry, Inc. and Mar-Jac Poultry LLC.

[7] "Mountaire" refers collectively to the affiliated entities Mountaire Farms, Inc. and Mountaire Farms of Delaware, Inc.

[8] "Perdue" refers collectively to the affiliated entities Perdue Farms, Inc. and Perdue Foods, LLC.

Sanderson Farms, LLC ("Sanderson Farms"),[9] Simmons Foods, Inc., Tyson,[10] and Wayne Farms, LLC ("Wayne Farms");

- **Pork:** Clemens Food Group, LLC ("Clemens"), Hormel Foods Corporation ("Hormel"), Indiana Packers Corporation, JBS USA Food Company, LLC ("JBS"), Seaboard Foods, LLC ("Seaboard"), Smithfield Foods, Inc. ("Smithfield"), Triumph Foods, LLC ("Triumph"),[11] and Tyson;

- **Turkey:** Butterball, LLC ("Butterball"), Cargill,[12] Cooper Farms, Inc. ("Cooper Farms"), Dakota Provisions, LLC, Farbest Foods, Inc. ("Farbest"), Foster Farms, House of Raeford, Hormel, Jennie-O Turkey Store, Inc. ("Jennie-O"), Kraft Heinz Foods, Michigan Turkey Producers, LLC, Perdue, Prestage,[13] Tyson, and West Liberty Foods, LLC.

15.   Agri Stats paused its turkey and pork processing reports in late 2019 in response to private antitrust litigation, but its executives have stated that they want to resume reporting in these industries once that litigation concludes.

---

[9] As of 2022, Sanderson Farms and Wayne Farms are under common ownership. When referring to the combined entity, the complaint refers to "Sanderson-Wayne." Otherwise, references to "Sanderson Farms" refers to Sanderson Farms, LLC and its predecessor entities and "Wayne Farms" refers to Wayne Farms, LLC and its predecessor entities.

[10] "Tyson" refers to the affiliated entities Tyson Foods, Inc., and Keystone Foods, LLC.

[11] Seaboard and Triumph operate as a joint venture for certain purposes. If referring to the joint venture entity, the complaint refers to "Seaboard/Triumph."

[12] "Cargill" refers both to Cargill Meat Solutions Corporation and its parent company Cargill, Inc.

[13] "Prestage" refers to Prestage Farms, Inc., Prestage Foods, Inc., and Prestage Farms of South Carolina, LLC.

III.   AGRI STATS PROFITS BY MANAGING THE EXCHANGE OF SENSITIVE INFORMATION AMONG COMPETITORS

16.   Agri Stats operates an information-sharing scheme that allows processors to exchange competitively sensitive information about their operations and sales that is comprehensive, granular, current, and available exclusively to processors.[14]

17.   Agri Stats collects competitively sensitive information that processors ordinarily would not disclose to competitors. Agri Stats does not gather information through voluntary surveys or periodic polling. Instead, it secures from processors a "████ ███" When a processor becomes an Agri Stats subscriber, or when an existing subscriber adds a new facility, Agri Stats sends a "setup specialist" onsite to map the processor's data to Agri Stats' systems. The implementation process takes two to three weeks, but once completed, processors can send vast quantities of data with minimal effort. This allows Agri Stats to quickly disseminate information on nearly every quantifiable metric, sometimes in a matter of days.

18.   Processors share information with Agri Stats on all aspects of their businesses, from the hatching of chicks or birth of livestock, through the raising and slaughter of animals for meat, to customer delivery. In the broiler chicken industry, for example, Agri Stats receives data on live production, processing, and sales, including:

---

[14] Agri Stats provides significantly limited versions of its reports to "allied participants"— a "very select" group that Agri Stats believes "████████████████████████ ████████████████████." Allied participants generally include pharmaceutical companies that use the data to track the efficacy of drugs used in animals, poultry genetics companies, and trade associations.

Live Production	Processing	Sales

• Quantity of Breeder Chicks Placed
• Housing Costs
• Feed Costs
• Bird Weights
• Hatching Metrics
• Mortality Rates
	• Wage Rates
	• Overtime
	• Line Speed
	• Insurance Costs
	• Product Yield
	• Maintenance Costs
		• Each Sales Transaction, including:
		  o Purchasing Customer
		  o Price Charged
		  o Products & Amounts Sold
		• Product Mix
		• Freight Costs

19.   Agri Stats audits the data it collects to ensure its reliability, thereby preventing processors from hiding or withholding information from their competitors. By validating the accuracy and completeness of the information, Agri Stats reduces common challenges to coordination—distrust among competitors and "cheating" on agreements. Agri Stats boasted in one presentation that it provides more trustworthy information than what a processor might receive directly from a competitor (Fig. 1).
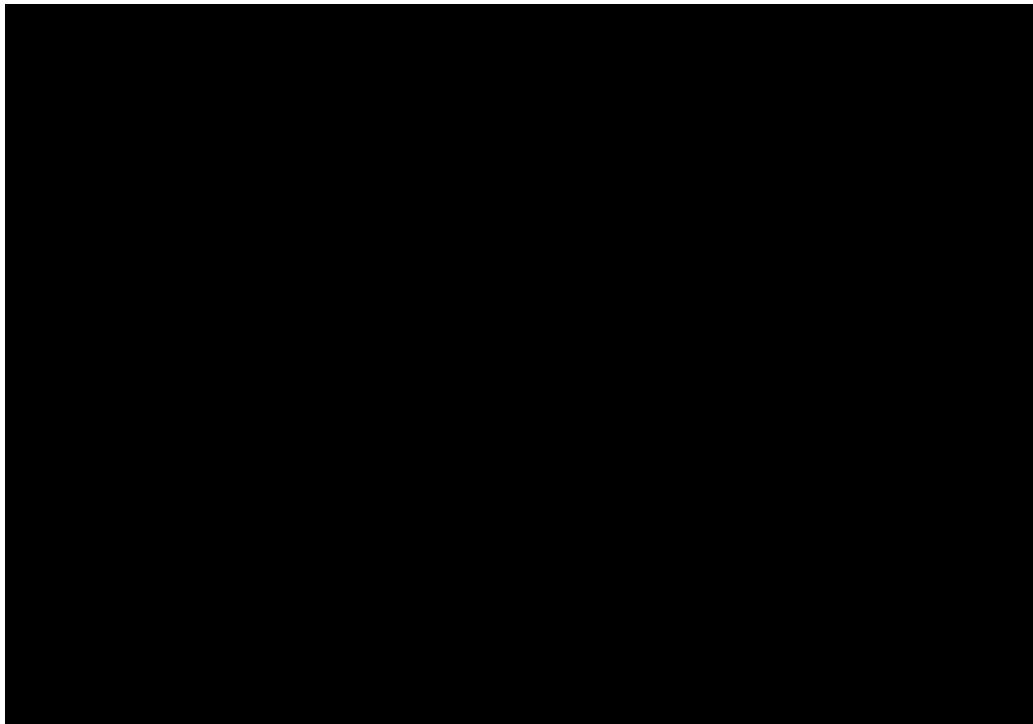

Figure 1

20.   Agri Stats converts the data shared by processors to common metrics so they can make apples-to-apples comparisons across their operations and sales. If processors exchanged internal ledgers directly, they would need to account for each other's differing accounting methods and processes. Agri Stats eliminates that barrier to coordination. For example, Agri Stats sales reports group products based on characteristics such as form, weight, grade, preservation method, and packaging, which allows processors to assess how their prices compare to weighted averaged prices of the same products sold by competitors.[15] Agri Stats processing reports similarly group workers into job categories and provide wage and benefits information in a unified form so that processors can compare employee wages and benefits in common metrics.

21.   Agri Stats compiles the data into "books" that it distributes back to the processors. Each book contains comprehensive "reports" detailing each competitor's performance on various business functions. The books that Agri Stats produces are hundreds of pages long and replete with company- and facility-level information. Agri Stats' former president described a typical book of reports as "a phonebook of information. . . . It's an inch and a half, two inches thick."

22.   The data that Agri Stats distributes is current. For example, broiler chicken weekly sales reports, which include pricing data, are typically published on Thursdays and include the previous week's data. For pork, Agri Stats provided an online data system

---

[15] Agri Stats sales reports will report these weighted average prices with as few as two processors (i.e., the recipient and one other processor).

called "Dataminer," which included data from the previous week. Processors could query

Dataminer to quickly and efficiently determine how their prices varied from the national

average.

23.   Agri Stats also publishes monthly reports that include information that is

between thirty and sixty days old. Such current data gives processors a near-real-time

understanding of their competitors' pricing, output, and costs, which enables the processors

to reduce competition.

24.   To ensure processors provide comprehensive information, Agri Stats

regularly enforces a "give-to-get" policy that requires each processor to share complete

data for each of its facilities. Agri Stats uses its position as a third-party intermediary to

ensure that each processor contributes complete information to further the overall

cooperative objective: increased profits for all processors.

25.   Agri Stats provides processors with the names of the companies and facilities

participating in its various reports.[16] Processors actively monitor these lists and contact

Agri Stats if certain competitors do not appear. For example, after Seaboard temporarily

left the pork reports in 2017, Smithfield's Vice President of Finance wrote to an Agri Stats

employee, "███"

The Agri Stats employee responded, "██████████████████████████

---

[16] Competitor data is superficially anonymized in Agri Stats reports. As discussed below, however, processors can and do deanonymize the data, linking particular data to individual processors and processor facilities.

11

██████████" She later assured the Smithfield Vice President of her attempts to include

its competitor in future reports: "█████████████████████████"

26.   Some processors explicitly made their participation contingent on their

competitors' participation. For example, in an effort to entice Tyson into providing data

for all of its pork plants, Agri Stats made a "████████████████████████████████

██████████" Agri Stats kept Tyson apprised of efforts to recruit Tyson's competitors

and JBS and Hormel joined the reports, as Agri Stats committed, within the year.

27.   The "give-to-get" policy also ensures that the processors' customers—

including grocery stores and restaurants that buy broiler chicken, pork, and turkey

products—do not obtain the information shared among the processors. When meat

purchasers and workers have sought Agri Stats reports, Agri Stats has refused. Asked why

Agri Stats adopted this policy, Agri Stats' President explained, "[O]ur customers are the

producers. We don't get in the way of the relationship between the producers and the

buyers."

IV.   AGRI STATS SHARES COMPETITIVELY SENSITIVE INFORMATION THROUGH WRITTEN REPORTS AND DIRECT COUNSELING

28.   Through its reports and consulting services, Agri Stats provides processors

with thousands of data points that allow them to understand their competitors' businesses.

The information that Agri Stats collects and distributes is available nowhere else, and

processors have regularly used this information to inflate prices and restrict output.

A. Agri Stats Reports

29.   The most apparent way Agri Stats shares information among competitors is through its written reports, which are organized into "books." Agri Stats produces a number of books consisting of standard and custom reports covering the various stages of production, including live production, processing, sales, and operations profits.

- The "**sales**" book includes reports comparing a processor's pricing for specific packaged cuts of meat with aggregated sales information compiled from competitors' sales.

- The "**live production**" book includes reports that provide details on each facility's costs and expenses for raising an animal for slaughter.

- The "**processing**" book includes reports that list each facility's costs and expenses for slaughtering an animal and dividing it into parts for sale.

- The "**operations profits**" book includes reports that use information from the live production, processing, and sales books to provide information on each participating facility's profit margins.

- The "**bottomline report**" is a short report that ranks each participating processor based on company-level profit margins on a per animal and per pound basis.

30.   In each industry, Agri Stats issues targeted reports that may come included in one of the "books" or as a standalone report. For example, as part of the turkey sales books, Agri Stats included more targeted "Retail and Deli" sales reports, providing sales data for deli turkey products. In pork, Agri Stats produced an Export Sales Report tracking pork sales data broken down by product type to foreign countries. Agri Stats also circulated to broiler chicken processors a "Freezer Inventory Report" providing information on the industry current total inventories, which correlates with price.

31.   In addition, processors frequently request other customized reports, such as processing reports that compare only processing facilities slaughtering broiler chickens of a certain size or sales reports that focus on a particular product segment, like consumer tray pack sales.

32.   Each report presents information in different ways. Some contain information about each competitor on a facility-by-facility basis, while other reports contain key metrics and data about highly specific product types. Two particular types of reports, sales and live production, are discussed in detail below.

1.   Agri Stats Sales Reports

33.   Several different Agri Stats books provide processors with competitively sensitive price information. Certain Agri Stats sales reports provide information on competitors' invoice prices on a company-basis for particular categories of meat (e.g., turkey deli meat).

34.   Other reports provide information for specific cuts of meat (identified at the near-SKU level).[17] Agri Stats provides the weighted average and top quartile prices and tells processors where their price ranks among competitors' prices for the same items. This pricing information is recent (from the prior week for weekly reports and 30-60 days removed for monthly reports). Agri Stats defines each item by its cut, trim, weight,

---

[17] "SKU" refers to "stock keeping unit" and is used to identify and track distinct types of items sold for inventory purposes.

preservation method, and packaging, allowing processors to see where their prices rank against competitors' prices for like items.

35.   For example, poultry processors sell millions of pounds of chicken breasts each week to wholesalers, grocery stores, and restaurants. Agri Stats divides this category into smaller subcategories based on whether the cuts are left whole, sliced, diced, cut into strips, or trimmed of fat. Agri Stats then further separates these cuts by preservation method (e.g., ice, carbon dioxide, vacuum packed, frozen, poly bagged) and packaging (e.g., boxed, "combo bin," bagged, consumer/retail ready, regular tray pack, jumbo tray pack). By reporting on these more detailed categories, Agri Stats allows processors to compare prices on similar items at the near-SKU level sold to like customers.

36.   Figures 2 and 3 feature a single line from a weekly Agri Stats broiler sales report providing information on a category of marinated chicken drumsticks, chilled, and packaged in jumbo tray packs (Fig. 2 at (b)).[18] For this particular item, Agri Stats tells the processor how much of the product it sold (Fig. 2 at (c)) and how much the industry sold (Fig. 2 at (c.2)), allowing the processor to determine that its sales made up approximately 19% of the national sales for that week (Fig. 2 (c)÷(c.2)).

---

[18] Figures 2 and 3 appear as a single line in the report, but are separated here to make them more legible.
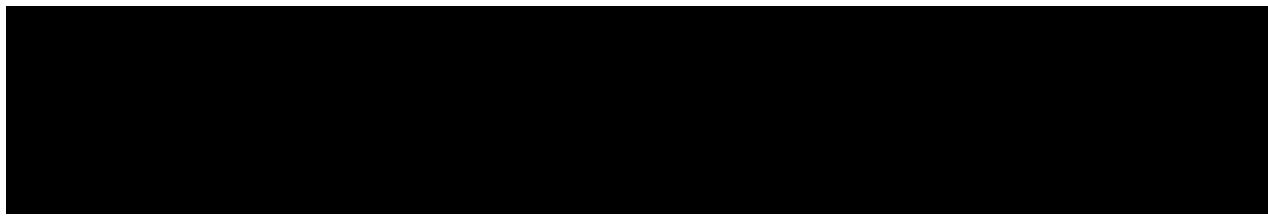
Figure 2

37.   For each item, the sales report also tells each processor the average price it charged (Fig. 3 at (d)) as well as the average industry price (Fig. 3 at (d.1)) and top quartile price (Fig. 3 at (d.2)) charged for like items. It then ranks the processor's price (Fig. 3 at (e)), with the top rank going to the processor with the highest price. In this example, Agri Stats tells the processor that its price "ranked" seventh out of the eight sellers of this product during the week (Fig. 3 at (e)), meaning its price was the seventh *lowest* of the eight sellers.
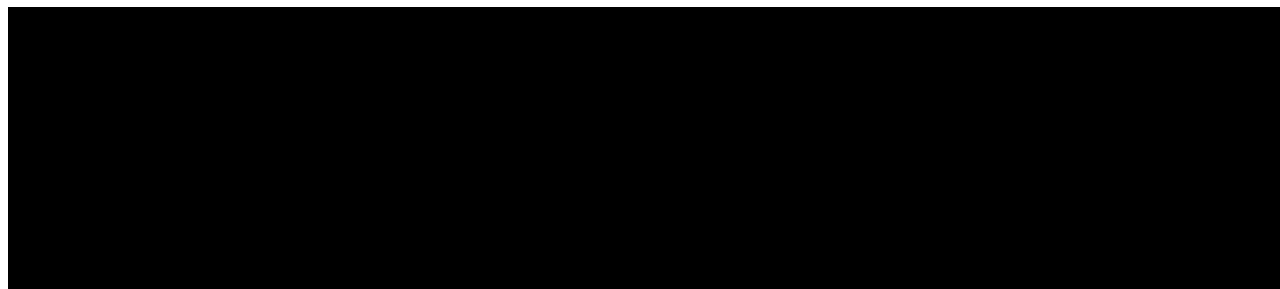
Figure 3

38.   A processor that learns it has a low rank on price for an item—such as seventh out of eight competitors—can raise prices on that item with reduced uncertainty about losing business to a competitor based on price.

39.   The average and top quartile prices provide the processor with additional details to guide its pricing. The Agri Stats sales report tells the processor how far below the industry average price and below the top quartile price (Fig. 3 at (e), (e.1.) & (e.2)) its

16

price fell, and it quantifies the economic impact of leaving the price at below average and below top quartile prices as lost revenue (Fig. 3 at (f) and (f.1)). This information is particularly valuable where only a small number of processors—sometimes as few as two—sell comparable items.

40.   As discussed later, processors have routinely relied on the weighted average price and weighted top quartile price information to identify particular items for price increases. Processors in each industry, often with Agri Stats' assistance, identified those items priced below the Agri Stats average as "opportunities" to impose price increases.

2.   Agri Stats Live Production Reports

41.   Agri Stats live production books comprise reports that provide facility-by-facility information on the production levels of each participating processor. Processors receive comprehensive reports that include all competitors, as well as more targeted reports that provide information about a select set of competing facilities.

42.   Consider the following excerpt from the broiler chicken live production book for February 2013, which provides production information about facilities that process birds weighing more than 7.5 pounds.[19] Agri Stats provides each processor receiving this

---

[19] Processors use birds of different sizes to produce different products. For example, a processor producing chicken breasts for sale to quick service restaurants may use smaller birds to make the ideal sized product for a chicken breast sandwich, while a company producing chicken tenders from breast meat might opt for using a larger size cut of breast meat.

report with a list of each facility—by company and location—processing that size bird

(Figure 4):
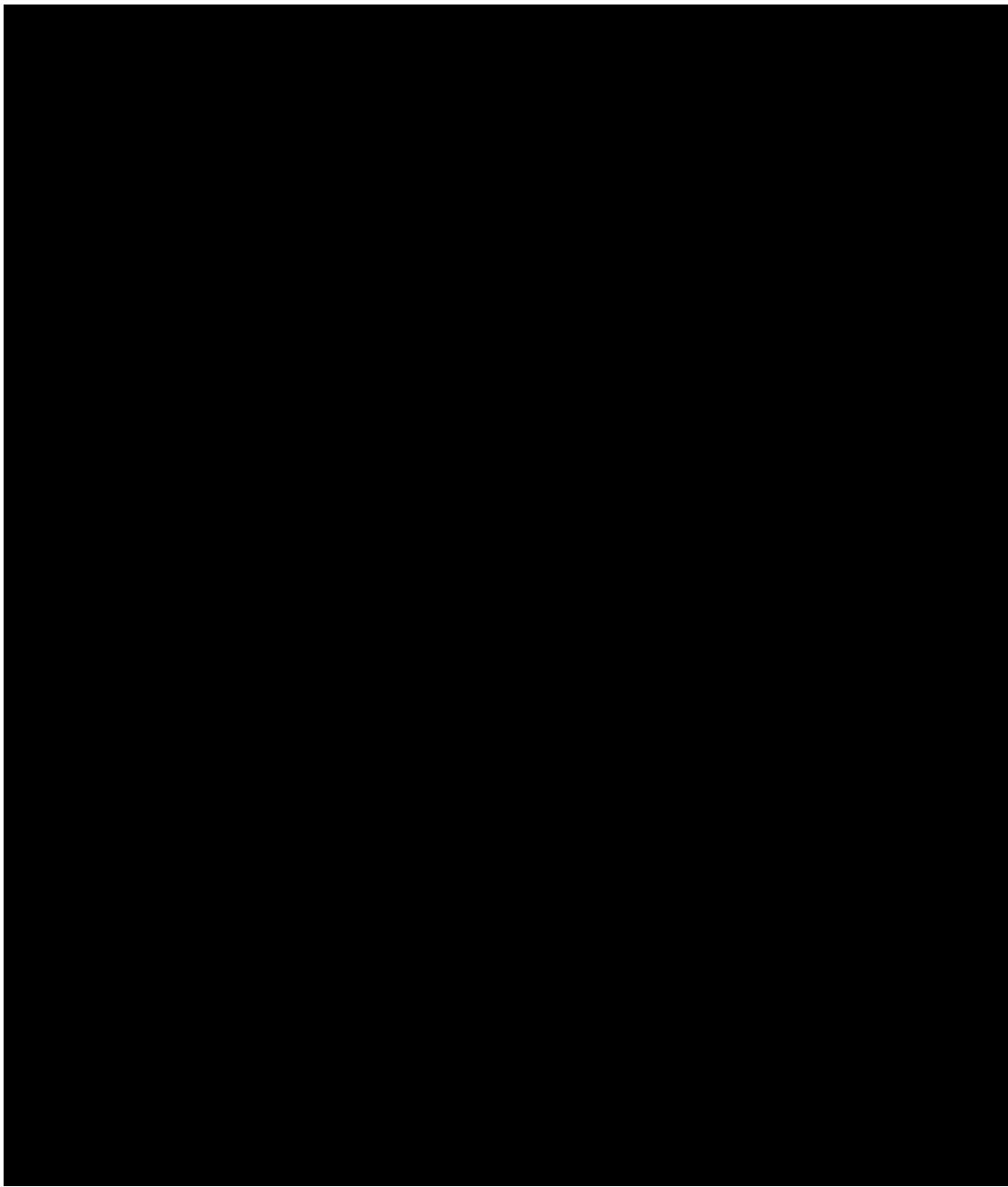
Figure 4

43.   The live production book then provides detailed information about the growing of poultry or livestock for each contributor, such as the breeder chick placements (also known as "pullets") associated with each broiler chicken processing facility.[20] Figure 5 is an excerpt from a report titled "Monthly Breeder Chick Placement by Plant." In this report, each processing facility is represented by a line number ("LIN") and the female (a.1.) and male (b.1.) breeder chick placements are stated for each facility. The reports compare breeder chick placements at each facility to the previous year's placements (Fig. 5 at (a.2) and (b.2)).

---

[20] Breeder chicks are called "pullets" when referring to broiler hens and "breeder poults" when referring to turkey hens.
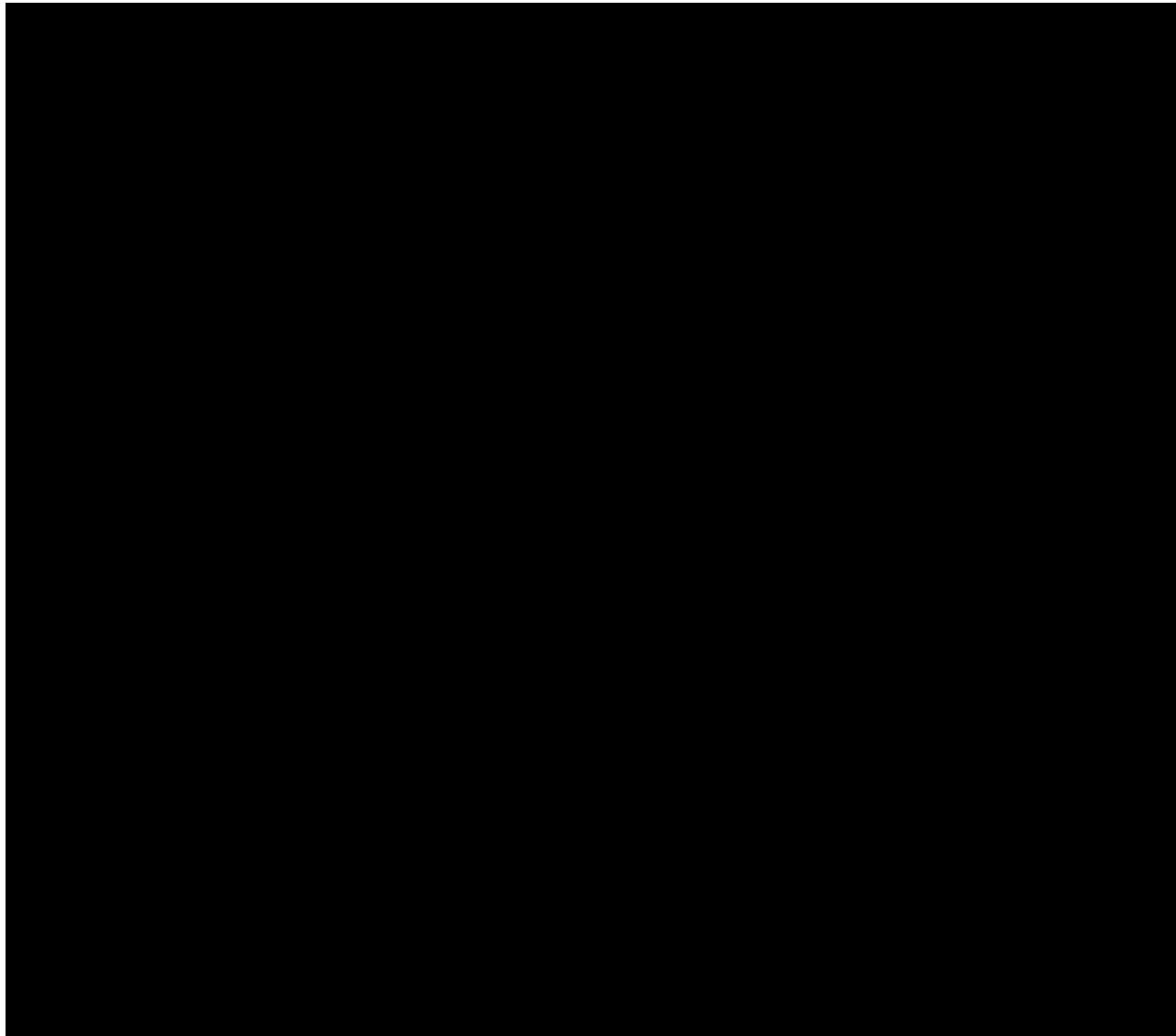
Figure 5

44.   In addition to facility-level information, the report provides industry-wide figures, including the total number of breeder chick placements and how those numbers compare with the previous year. Specifically, the report discloses that placements have increased by 45.80% for female chicks and by 45.37% for male chicks (Fig. 5, line 34 at (a) and (b)). Unlike public data sources that rely on voluntary reporting, the breeder chick placement information here is comprehensive (all subscribers contribute) and is available

20

for different-sized birds so processors can track whether processors are expanding production in certain sales channels.

45.   As Agri Stats has stated in its live production customer manual (Fig. 6), the purpose of providing breeder chick information is to "help forecast Broilers & pounds produced for future months."

BREEDER SECTION-CUSTOMER MANUAL

1.1 – BREEDER CHICK PLACEMENTS BY FLOCK

PURPOSE:

1.   To identify the number, date, and breed of chicks being placed that will become pullets on a flock by flock basis.

2.   To help forecast Broilers & pounds produced for future months.

Figure 6

46.   Breeder chicks begin laying eggs at about six months after placement. When a broiler chicken processor is planning to expand, typically it needs to begin increasing the size of the hatchery supply flock by increasing breeder chick placements approximately six months in advance. Monitoring breeder chick placements allows processors to forecast the future production plans of competitors.

47.   Joe Sanderson, the former CEO of Sanderson Farms, specifically referred to tracking "pullet placements" in Agri Stats reports when he assured investors that Sanderson had no plans to increase production because his competitors were not doing so. He also explained that he could track production in terms of bird weight across sales channels (big bird, small bird, track pack) using Agri Stats:

21

I think the increase in Agri Stats that showed up in 2009 in weight, was primarily in the tray pac[k] region. There was a nominal increase in the big bird deboning but it was very slight. The tray pac[k] region increased more than anyone else, but it has not changed in about six months now and I think that has topped out. Small bird hasn't increased any. I don't really anticipate very much movement in weights any more in 2010. I don't see any more head until we see some improvement in pricing, so I think head count is going to run close to what we have.[21]

B.   Agri Stats Sales Consulting

48.   In addition to providing processors with written reports, Agri Stats meets with individual subscribers multiple times a year to discuss how to use the information that Agri Stats collects. Frequently, Agri Stats reviews price "opportunities" with processors like those discussed above and identifies items and customers to target for price increases. Agri Stats account managers prepare detailed presentations for their subscribers highlighting the additional revenue they could make by increasing prices.

49.   Agri Stats has touted its ability to identify opportunities to raise prices as a selling point. When one processor contemplated unsubscribing from Agri Stats' bacon report, for example, Agri Stats employees encouraged it to continue subscribing by pointing to $100,000 in additional revenue the processor could make by raising prices on particular bacon products.

---

[21] Yet another report, the Operations Profits Report, allows processors to track facility-by-facility and "dock" prices of their competitors. The dock price refers to the composite amount a processor receives for a processed chicken, turkey, or hog. This number is calculated by adding up the amount received for each part of the animal that is sold.

50.   The consulting sessions provide an opportunity to directly advise participants on raising prices to boost industry profits. The in-person consulting sessions also provide processors with an opportunity to discuss with Agri Stats account managers information that might not be included in Agri Stats reports, but nevertheless might be gleaned from the detailed information Agri Stats receives about the operations and sales of nearly every major participant in the industries in which it operates.

V.   PROCESSORS USE THE AGRI STATS INFORMATION-SHARING SCHEME TO INCREASES PRICES AND RESTRICT THE SUPPLY OF MEAT

51.   With Agri Stats' encouragement and facilitation, Agri Stats' processor-subscribers use the information collected and distributed by Agri Stats to increase and stabilize prices and reduce the supply of meat.

A.   Processors Use Information Shared through Agri Stats Reports and Consulting to Raise Prices

52.   By enabling and encouraging processors to focus on increasing prices on items priced below their competitors, Agri Stats helps processors boost sales margins, thereby increasing profits without lowering prices to take sales from competitors. The data allows processors to profitably raise prices on relatively low-priced products with greater confidence that they will not lose sales to lower priced rivals. The examples below illustrate how processors used Agri Stats reports to stabilize and raise prices.

1.   Tyson Used Agri Stats Sales Data to Increase Chicken Prices

53.   In January 2010, Tyson embarked on a plan to use competitor data exchanged through Agri Stats to increase prices in its fresh chicken business, a project that would

23

potentially impact more than 3,000 retail outlets. Tyson deployed Agri Stats' weekly sales report—data that was often less than a week old—to its sales force for use in negotiating prices. Tyson management told employees to aggressively push price increases and "[h]ave price courage."

54.   Tyson focused on raising prices on fresh tray pack items (chicken packaged to sell predominately at grocery stores) to meet the national average as reported by Agri Stats. Tyson tracked the "variance" between Tyson's average price and the national average price, and circulated a chart showing the company's progress at reducing the variance. As shown below (Fig. 7), the bottom flat line represents the variance of -3.8 cents per pound (when Tyson began its pricing initiative) while the top flat line represents targeted "zero variance." Each week, Tyson used Agri Stats data to track the variance between its average price for this category of products and the industry average. The chart shows how Tyson, by increasing prices, gradually narrowed the variance and brought its prices in line with the industry average price.
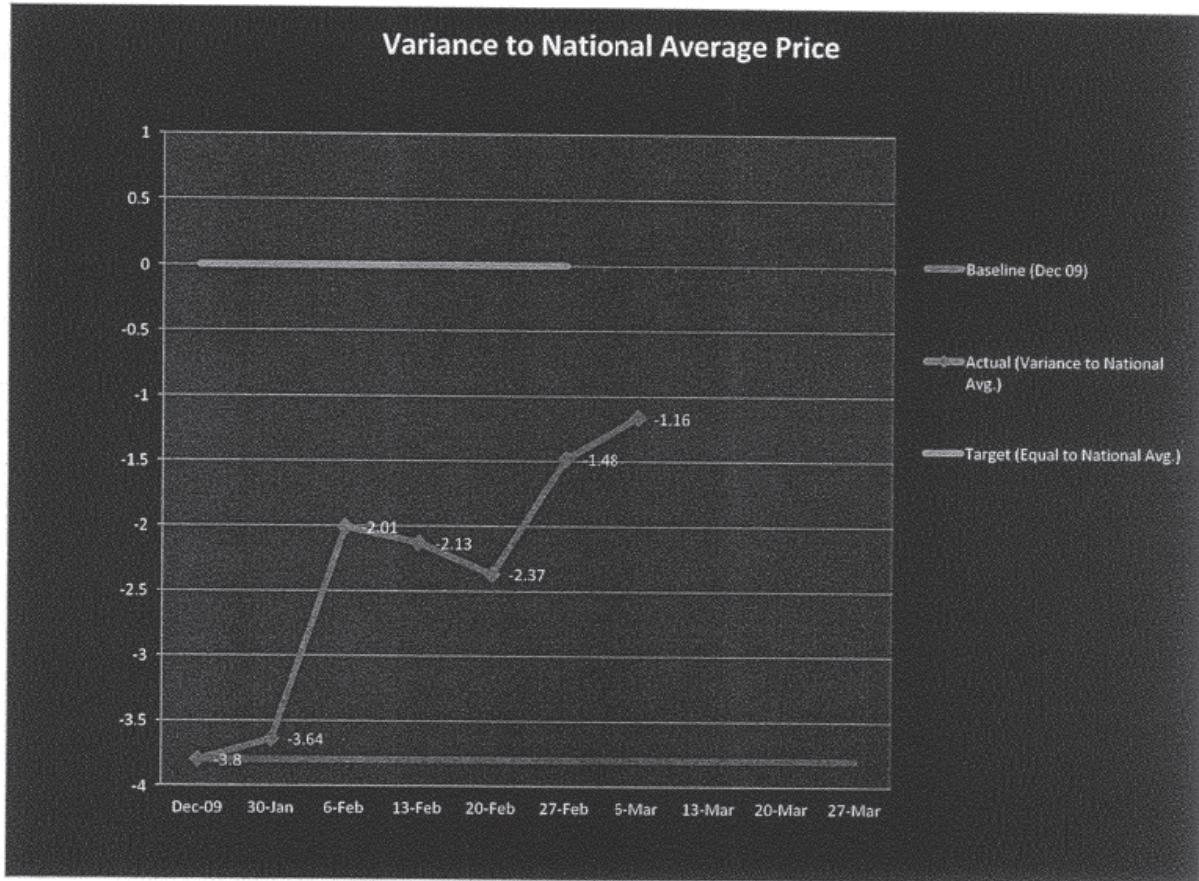
Figure 7

55.   Tyson's price increases were not dictated by independent market forces that affected costs or supply. Rather, the Agri Stats reports, by providing averages and the top 25th percentile, informed Tyson that it could increase prices on items that its competitors already sold at higher prices. That is what Tyson did.

56.   At the same time, Tyson's competitors were also raising prices, prompting one Tyson executive to explain the difficulty in closing the variance: "Overall we improved in sales price in several categories vs the previous week but it is obvious that our

competition also made improvement. As we have discussed[,] we not only have to increase our price but we also have to out run our competitors['] improvements."

57.   Tyson and its broiler chicken competitors could focus on raising prices because they understood that processors did not use Agri Stats data to lower prices. A Tyson sales executive stated that he instructed his team to "stay ahead" of other broiler processors' price increases and that he never considered the possibility that competitors would respond by reducing their prices to take market share away from Tyson. From January 2010 to May 2012, Tyson raised the average price of tray pack items by over 20% and continued raising prices thereafter.

2.   Sanderson Farms Used Agri Stats Sales Data to Increase Chicken Prices

58.   Sanderson Farms used Agri Stats reports in a similar manner. For example, in December 2012, an executive circulated an email stating that the company had secured more than $18 million in price increases over the previous six months while noting, "We are not done." He directed his sales team to continue renegotiating with open-ended contract customers to increase prices, explaining, "Start with wing help and then address any other parts that may be deficient. . . . All customers under contract will also be asked for help on wings and any other items deficient in Agri Stats."

59.   The Sanderson executive attached a spreadsheet (Fig. 8) identifying each customer, the contract date, the difference between current pricing and Agri Stats pricing, the status of any negotiations, and the amount of additional revenue secured or targeted for that customer. The spreadsheet ranks customers by the variance between Sanderson's

prices and the Agri Stats price, and demonstrates how the company targeted for price increases those customers who had been receiving prices below Agri Stats prices. The customers include some of most well-known supermarkets in the United States.

Customer	Contract Date	Oct. Agristats	Status	Achieved	Target
	November-14	$ (0.0957)	$0.08 increase on program on Nov. 2	$1,796,756.48	
	Open ended	$ (0.0763)	$0.02 increase 11/10. Moved to Kn on 12/3. $0.0325 adv. ($0.03 bracket on 11/28)	$855,201.90	
	December 2012	$ (0.0714)	Contract negotiatins in Dec. (ask for $0.10 submitted 10/31)		$ 1,697,032.00
	October-13	$ (0.0708)	$0.0428 increase on program in Oct. and $0.04 bracket on 10/31	$989,800.00	
	December-14	$ (0.0628)	Less than a year into contract		
	July 2014	$ (0.0611)	$0.035 increase on progam in Sept	$3,673,987.94	
	January 2014	$ (0.0545)	Less than a year into contract		
	December 2013	$ (0.0457)	$0.049 Increase on entire program in Aug. Asking for flat price help. $0.0288	$6,563,866.04	$ 3,857,945.75
	June-13	$ (0.0343)	Proposal sent 11/29. $0.0625		$ 1,000,000.00
	Open ended	$ (0.0342)	Need wings, boneless, tenders. Meeting Dec 12		$ 136,453.92
	June-13	$ (0.0197)			
	Open ended	$ (0.0140)	Got $0.05 on drums/thighs and $0.1857 on wings on Dec 5. $0.03 bracket 11/21	$ 814,828.80	
	July 2014	$ (0.0034)	$0.14 increase on wings in Aug and a $0.03 bracket on 10/31	$ 32,032.56	
	December 2012	$ 0.0039	Contract negotiatins in Dec. Asking for $0.087		$ 1,311,796.50
	Open ended	$ 0.0063	$0.02 on dark meat and $0.11 on wings. 11/29	$ 223,459.08	
	September-14	$ 0.0071	Got $1.5 mil in Sept	$ 1,475,387.60	
	Open ended	$ 0.0105	Need wings, boneless, tenders. Meeting Dec 12		$ 199,353.84
	Open ended	$ 0.0139	$0.0417 increase on program in Nov. on drum, thigh, wing	$ 411,000.00	
	Open ended	$ 0.0152	Got wing help on 12/3. Got $0.03 on bracket 10/31	$ 538,525.95	
	Open ended	$ 0.0164	Need wings, drum, thigh, hearts (sent new program 11/19)		???
	Open ended	$ 0.0271	Got increase on drums, thighs, splits and wings in Dec.	$ 14,970.12	
	March 2013	$ 0.0280			
	Open ended	$ 0.0366			
	Open ended	$ 0.0397	$0.26 increase on wings in Aug	$ 774,310.94	
	Open ended	$ 0.0456			
	Open ended	$ 0.0502	Got a $0.05 on drums and bnls. $0.02 on LQ in Dec	$ 635.60	
	Open ended	$ 0.0504			
	Open ended	$ 0.0542			
	Open ended	$ 0.0643			
	December 2012	$ 0.0690	Contract negotiatins in Dec. Asking for $0.087		$ 393,538.95
	Open ended	$ 0.0738			
	Open ended	$ 0.0857	$0.12 increase on wings in June	$ 199,765.44	
	Open ended	$ 0.0889			
	Open ended	$ 0.0958	Got help on drums, thighs and wings in Dec.	$ 473.76	
	Open ended	$ 0.0997			
				$18,365,602.21	$8,536,120.96

Figure 8[22]

60. These examples from Tyson and Sanderson reflect a broader trend. As Tyson and Sanderson were raising prices, industry-wide profit margins increased dramatically for broiler chicken processors in 2013 and 2014, according to Agri Stats data.

---

[22] The United States has obscured customer names in this document.

3. Cargill Used Agri Stats Sales Data to Increase Turkey Prices

61. Turkey processors used Agri Stats in a similar manner. In a 2016 presentation slide entitled "Why AgriStats & Strategic Pricing?" (Fig. 9), Cargill explained that Agri Stats provides "insight into competitor's pricing" and identifies "what the market will bear." The "goal" of Agri Stats and Strategic Pricing is "forward motion," represented by figures raising a curve.
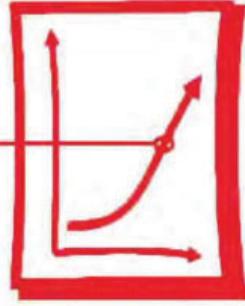
Figure 9

62. Consistent with the figures increasing the price curve, Cargill used Agri Stats data to raise prices. Beginning in late 2013, Cargill began relying on competitor data exchanged through Agri Stats to "increase [its] Benchmarking focus." As shown below (Fig. 10), Cargill increased its prices from three cents below the national average to well

above the national average as measured by Agri Stats' net dock price. It would maintain those increased prices at least into 2016.
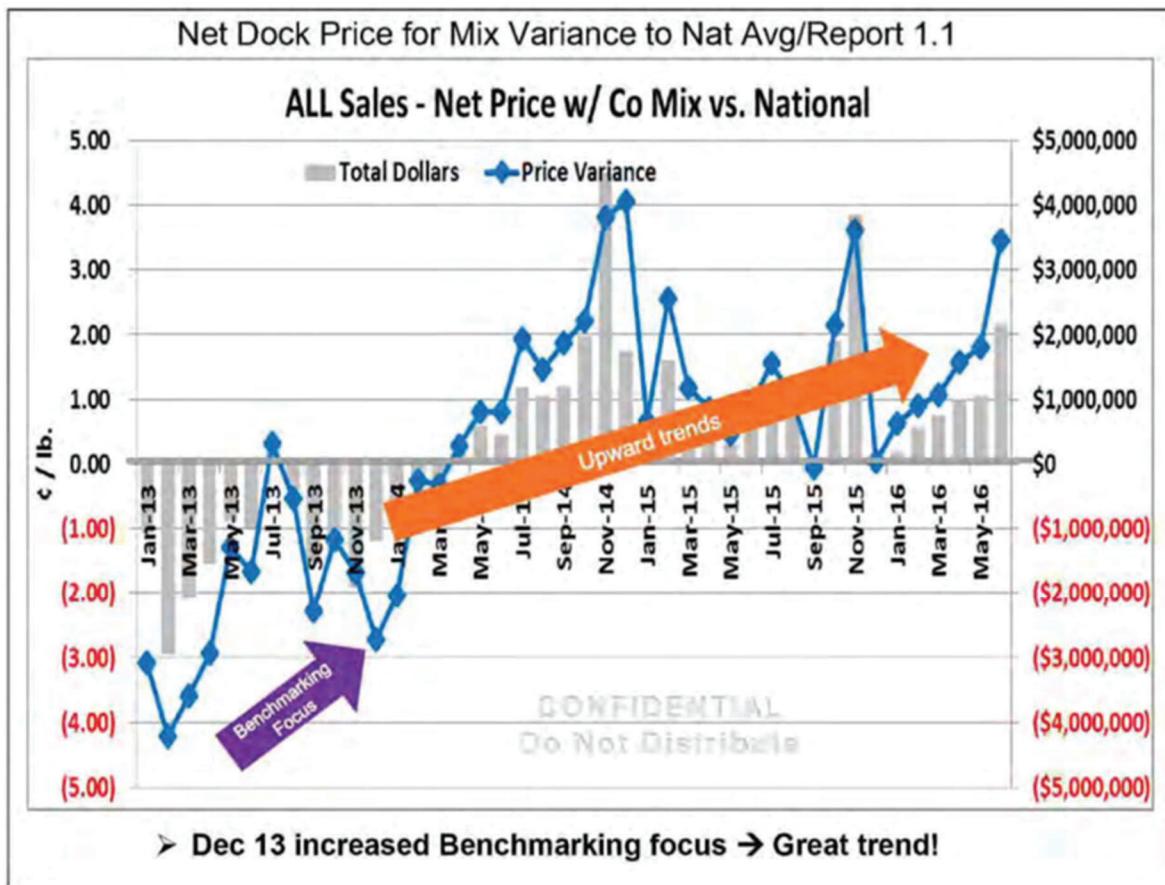
Figure 10

4.   Butterball Used Agri Stats Sales Data to Increase Turkey Prices

63.   Butterball likewise used Agri Stats sales data to increase turkey prices. In April 2014, Butterball sales executives and employees sent around Agri Stats sales data noting "poor results versus the competition." These "poor results" were turkey products that were priced below the industry average. A Butterball vice president sent a list of "Product Group/SKU[s]" identifying these products. Another vice president noted that

"[m]arkets are at historic highs" and Butterball needed to take advantage of the higher

prices "everywhere we can."

64.   In response, a Butterball sales employee stated that Butterball had increased

or would increase targeted turkey product prices for a number of large food distributors.

65.   While Butterball and Cargill were increasing turkey prices, market-wide

turkey prices increased in a way that cannot be explained by underlying costs of production.

In fact, costs actually *decreased* during this period according to Agri Stats data. Yet,

consistent with Agri Stats' advice, processors raised prices. According to Agri Stats' own

records, turkey processors were able to increase margins by more than 300% between 2013

and 2016 and achieved historic profitability.

5.   JBS Used Agri Stats Sales Data to Increase Pork Prices

66.   Pork processors also used Agri Stats sales data to increase prices. Referring

to its focus on Agri Stats pricing data as "margin-based" decision-making, JBS regularly

used Agri Stats to monitor prices and pursue price increases on items sold below the

national average price. For example, in August 2010, a JBS executive instructed his sales

team to identify SKUs that "are LOW relative to the industry." A JBS employee promptly

identified ten products to consider for price increases based on Agri Stats data and

suggested in several cases that JBS seek further guidance from Agri Stats on pricing. Here

again, JBS's efforts were part of a broader trend. Profit margins for pork packers as

measured by Agri Stats grew strikingly—over 50% from 2010 to 2011.

B.   Agri Stats' Give-to-Get Policy Makes it Easier for Processors to Increase Prices Due to Information Asymmetry

67.   Processors could increase prices so readily, in part, because meat purchasers such as grocery stores and restaurants do not have access to the same information. Agri Stats boasts that no other service offers anything close to what it provides to its subscribers. As one agricultural economist and former EMI employee admitted, "██" Agri Stats' President stated that "██." Its processor co-conspirators agree; one Tyson executive stated that no other service provides this kind of comprehensive information regarding sales data. Yet Agri Stats has refused to make the competitively sensitive information it readily distributes among competing processors available to purchasers.

68.   This information asymmetry contributes to processors' ability to ratchet prices upward. Each processor can identify which of its products are priced below its competitors' and raise prices on those products with less concern about price competition. By contrast, purchasers cannot use the same information to identify when they are paying comparatively high prices because Agri Stats refuses to sell them its reports. Other statistical services available to the public (either for free or by subscription) are not substitutes for the data shared between the processors via Agri Stats because no other service has the same access to processors' internal ledgers.

69. In a competitive market, a processor may find it advantageous to lower its prices, increase its sales, and thereby grow its market share. But Agri Stats reports do not tell a processor how much additional profit it could make by selling *more* meat at a *lower* price than its rivals. One executive at pork processor Smithfield testified that he did not know of a single instance in which Smithfield used Agri Stats sales reports to decrease price. A Tyson sales executive similarly testified that he was unaware of a single instance in which his broiler sales team used Agri Stats information to reduce prices.

70. Encouraging price competition runs counter to Agri Stats' goal of increasing the profitability of the *industry* as a whole. Agri Stats has stated that its "paradigm" is to "███████████████████████████████████" Thus, Agri Stats enables and encourages participants to "████████" and boost collective *industry* profits, not compete to maximize the individual profits of the respective processors.

71. Agri Stats' "rankings" are a case in point. In its sales reports, for example, Agri Stats ranks processors based on how high their prices are. The processor charging the highest prices is ranked first, and the processor charging the least is ranked last, regardless of total profits. These rankings, which depend on competitively sensitive information collected by Agri Stats, push markets toward anticompetitive pricing by promoting increased margins.

72. Certain processors have even used Agri Stats' rankings in the sales reports to give bonuses for sales staff. These employees are therefore incentivized to sell less

volume at higher prices rather than higher volume at lower prices, which results in higher prices for consumers.

C. Agri Stats Enables Processors to Restrict Supply

73.   Price and output are interrelated. Generally, when demand stays constant, decreased supply of a product will increase its price. Broiler chicken, pork, and turkey processors have used competitively sensitive information exchanged through Agri Stats to restrict supply, which also leads to stabilized and inflated prices.

74.   Agri Stats offers more comprehensive, detailed information than publicly available sources because Agri Stats collects data that comes directly from the internal ledgers of the processors. The information also covers multiple aspects of the production process, and includes metrics that indicate current inventories and future production.

75.   By using Agri Stats to monitor each other's production plans, processors are more easily able to coordinate supply restraints and confidently ensure that no one is attempting to increase production and expand market share. Sanderson Farms and Pilgrim's, for example, both explicitly discussed making broiler supply decisions based on Agri Stats data during earnings calls.

76.   In the broiler chicken and turkey industries, for example, Agri Stats reports the number of "breeder" chicks placed at the breeder farms affiliated with each processor in its live production reports. The time from breeder chick placement to meat delivery is highly regular, and, unsurprisingly, the number of breeder chicks placed closely predicts final output. As mentioned above, the Agri Stats user manual for broiler processors states

that Agri Stats collects and publishes breeder data to allow subscribers to "help forecast Broilers & pounds produced for future months." The Agri Stats user manual for turkey processors contains a similar statement. When processors know the future production plans of their competitors, they can more easily coordinate supply restraints and anticipate when price increases will be successful.

77.   Agri Stats reports on many other supply metrics. Processors can monitor broiler chicken output through hatchery utilization (i.e., the percentage of incubator space in a hatchery that is filled with eggs), density of broiler housing, average flock size, and average age at time of slaughter. Even metrics that may not obviously implicate supply to a layperson can reveal competitively sensitive information. For example, processors use certain metrics in Agri Stats reports to estimate a company's average bird weight, which is one of the variables processors use to increase or decrease total output. Sanderson Farms specifically mentioned monitoring competitor bird weights in a May 2013 investor call.

78.   Agri Stats turkey reports included similar metrics that allowed competitors to track output, including breeder chicks placed, average flock size, bird age, bird weight, density of turkey breeder housing, hatchery utilization, and egg set capacity per week. Butterball, for example, deanonymized the Agri Stats data to track specific competitors' output trends.

79.   The pork reports included metrics allowing processors to estimate the total number of pigs slaughtered and total pounds produced at competing facilities. These

34

metrics include "head killed per operating hour," the number of shifts operated, the number of hours per week each employee on a shift works, and live pig weight.

80.   In the broiler chicken market, Agri Stats and EMI also distributed time-sensitive information regarding current inventories through a "Freezer Inventory Report." This weekly report shows the aggregate pounds of various broiler chicken cuts in processors' on-site freezers. An example is shown in Figure 11.
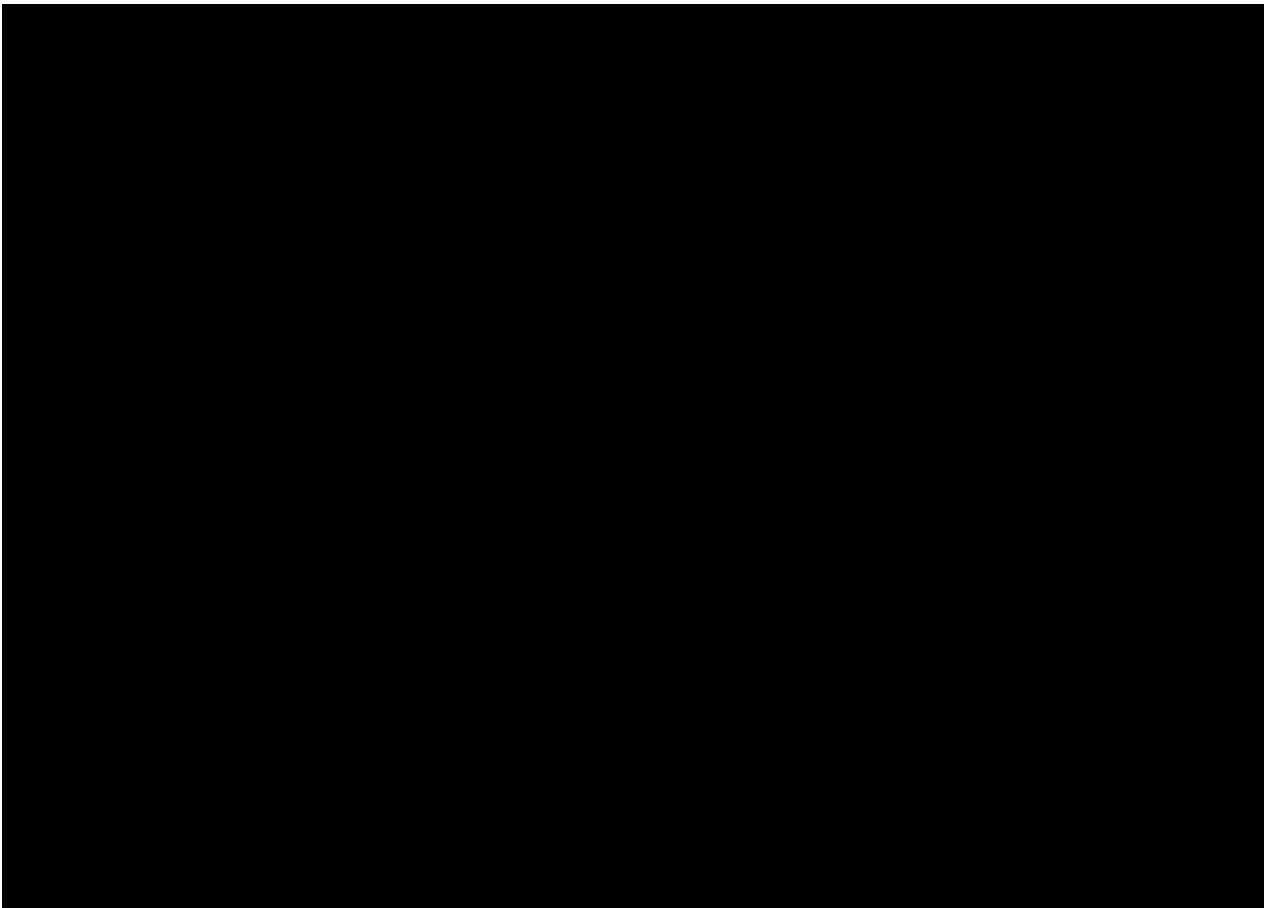

Figure 11

81.   Agri Stats advised processors that freezer inventory closely correlates with price, and processors understood that connection. Shortly after receiving a March 2011

35

Freezer Inventory Report showing six weeks of inventory reductions, Mountaire Farms'

CEO wrote, "Tell those sales people to raise sales prices . . . . [T]he tide has turned and our

sales people must demand more and not be apologetic . . . ."

82.   Although EMI produced and audited the Freezer Inventory Report, it branded

the report with the Agri Stats logo, referred to it as the "Agri Stats Weekly Inventory

Report" and made the report available only to processors.

83.   Agri Stats provided pork processors with an "Export Sales" report as another

way to monitor supply. Pork processors have regularly exploited the export market to

constrain domestic supply, even when export sales result in a loss, because restraining

supply significantly increases domestic pork prices. A Smithfield economist estimated that

a 1% reduction (or "disappearance") in domestic supply would lead to a 3% to 5% domestic

price increase.

84.   The same Smithfield economist was asked in an internal email, "[W]hy do

we want to go to the export at a loss?" He replied, "Very simple: More exports translate to

higher meat value [domestically]." This statement makes sense only if Smithfield was

confident that no other processor would capture lost domestic sales. Smithfield had reason

to be confident. For example, Seaboard wrote in a weekly update in 2012: "We continue

to chase all the export opportunities we can find to keep excess product off the US market."

Tyson's CEO made similar comments as well.

85.   The Agri Stats export sales reports allowed pork processors to track the

quantity of exports and pricing in non-U.S. countries for identified pork items. Pork

processors, including Tyson, Smithfield, and Cargill, monitored fluctuations in the volume of exported pork based on pork cut and country and asked Agri Stats to perform various custom analyses on exports.

86.   Just as with prices, Agri Stats has enabled and encouraged processors to maintain output discipline. Agri Stats routinely sent analyses to processors (sometimes through EMI) encouraging them to "████████████" For example, in September 2014, an Agri Stats vice president circulated a presentation to various broiler companies, including Wayne Farms, Pilgrim's, Perdue, and Tyson, commenting that "█████████

███████████████████████████████████████" The vice president reminded the processors that "████████████████████████████

████████" because "███████████████████████████████████

██████████████████████████████████" He called the numbers

"████████████████████████" The vice president effusively praised processors for maintaining "██████" over production levels, signaling that they should restrain output to continue "████████████████████████" Agri Stats reports provided further assurance that each processor could restrict its own output by monitoring competitor output through the reports Agri Stats provided.

D.   Agri Stats Enables Competitors to Exchange Plant and Company Level Information

1.   Processors Exchange and Deanonymize Agri Stats Reports

87.   Agri Stats reports not only enable the exchange of competitively sensitive price and supply metrics, they also make it easier for processors to exchange other facility-

level or company-level information directly—a practice Agri Stats enabled and knew occurred.

88.   Many Agri Stats reports provide disaggregated, facility-level data for each participating facility. The inclusion of comparable, facility-level data makes the sharing of competitively sensitive information simpler and more likely to be anticompetitive.

89.   Although Agri Stats ostensibly anonymizes the data to conceal each company's and facility's identity, Agri Stats knows that processors are able to deanonymize the reports. Once deanonymized, the reports allow processors to monitor specific competitors' output, cost, and price metrics even more closely. Processors can deanonymize Agri Stats reports without their competitors' assistance. Some metrics contained in Agri Stats reports are so detailed that deanonymization becomes fairly straightforward. A Butterball employee once boasted, "I can pick the companies for rankings with 100% certainty" using information found in Agri Stats' turkey Bottomline Report.

90.   Once a facility is identified—for example, based on a unique feature related to its operations or product offerings that industry insiders would recognize—the plant can be tracked across different reports using that identifying metric. Tyson's Director of Competitive Intelligence and Analysis testified that once he was able to identify facilities "on the operations profit page, I can go back through the other books to identify their data elsewhere. Agristats often takes data to 4 decimal places which allows that number to be identified somewhere else in the books (live, plant, processing mix, sales, etc…)."

Similarly, a Pilgrim's employee who previously worked at Agri Stats informed a work colleague that information in the Operations Profits book could help identify particular processors.

91.　　Deanonymization became a regular part of many processors' analyses of Agri Stats reports. A Mountaire employee regularly deanonymized Agri Stats' broiler chicken reports, considering it part of her official job duties. Other chicken processors such as Tyson, Pilgrim's, Perdue, Sanderson Farms, Wayne Farms, Amick Farms, Koch Foods, and Case Farms have deanonymized various Agri Stats broiler chicken reports.

92.　　Tyson held regular internal meetings in which its employees analyzed deanonymized Agri Stats pricing information about certain cuts of pork from its competitors' facilities. Dubbed the "naming process," Tyson's process for deanonymizing pork facilities involved multiple employees from different departments. Besides Tyson, Seaboard/Triumph and Smithfield deanonymized various Agri Stats pork reports.

93.　　Cargill tracked its competitors' pricing based on the turkey Retail and Deli report provided by Agri Stats. A December 2015 spreadsheet from Cargill (Fig. 12) showed the company tracking the invoice prices and net sales prices of its largest turkey competitors—Butterball ("BB"), Jennie-O ("JOTS"), Cooper Farms, and Perdue—in Agri Stats reports (referred to below as "A/S"):
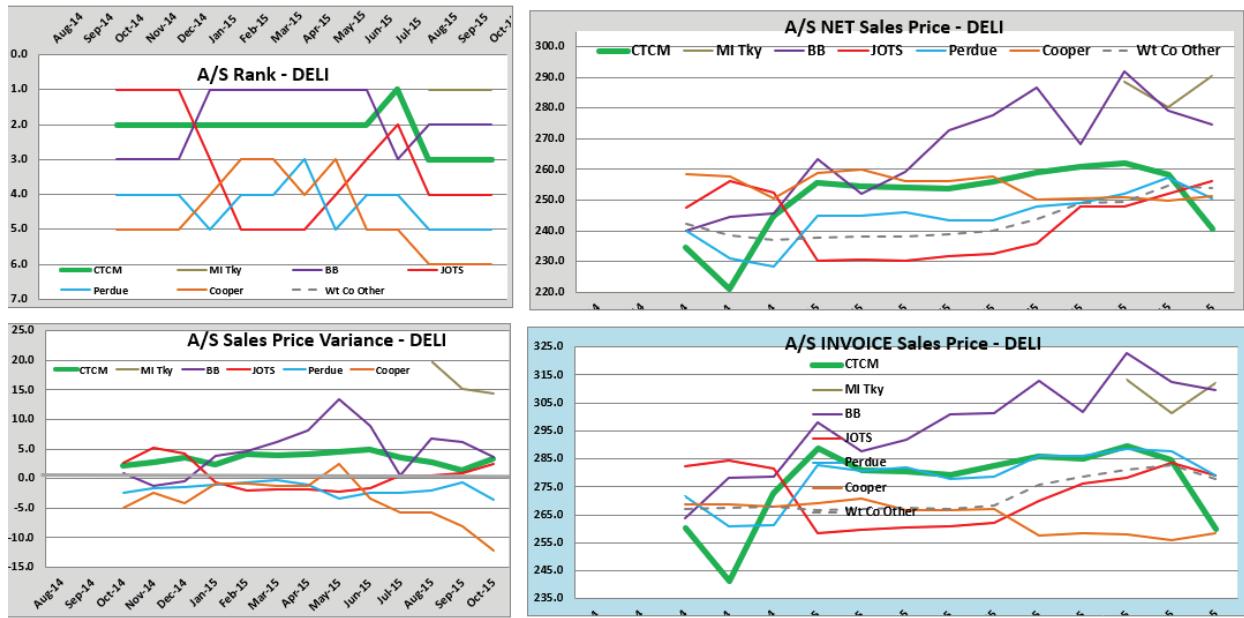
Figure 12

94.   Like Cargill, Butterball, Jennie-O, Cooper Farms, Perdue, and Farbest also deanonymized various Agri Stats turkey reports.

95.   By including a list of contributing facilities at the beginning of each report, Agri Stats makes the deanonymization process easier. At least one subscriber told Agri Stats that it would stop subscribing to certain reports if the company did not list participating companies and facilities on those reports.

96.   Processors informed Agri Stats personnel over the years that several of its subscribers deanonymized its reports. Nevertheless, Agri Stats took no action to stop this practice and continued to provide the same reports and consulting services.

2. Agri Stats Employees Directly Facilitate the Exchange of Competitor Data

97. Agri Stats employees also served as more direct conduits for the exchange of competitively sensitive information. For example, in 2016, a Cargill employee emailed its account manager at Agri Stats, relaying that certain turkey purchasers complained that Cargill was overpricing ground turkey compared to its competitors. The Cargill employee explained that this conflicted with her understanding of the Agri Stats data.

98. The Agri Stats account manager not only confirmed Cargill's interpretation, but she also provided specific pricing information for each grocery store at issue:

> On Wal-Mart 85% - you are about 20 cents higher than other primary supplier but 11 cents under another supplier with less volume. 93% is well under the leading supplier by 27 cents. Ground white is also well under other suppliers ranging from 7 cents to under 65 cents under.
>
> HEB 85% - you are 24 cents higher than other supplier.
>
> Wakefern 85% - you are 38 and 32 cents higher than other 2 suppliers. 93% looks right in line. Ground white is in line with 1 other supplier but under 2 other suppliers with less volume by 45 cents.

99. By providing Cargill with detailed information about competitors' prices for specific purchasers, Agri Stats provided Cargill with an advantage that was unavailable to Cargill's customers.

100. In another incident, the same Agri Stats account manager and Cargill employee referenced "ad hoc comments" made by the Agri Stats employee during an onsite visit before asking, "If we set a goal to be 3¢ above Natl Ave – will we be beating our key

competitors? Can we spot check this with you say 1/quarter to ensure we're focused on the right pricing improvements?"

101. The Agri Stats employee responded with a list of product categories and made specific recommendations for how much Cargill should raise prices. For example, the Agri Stats employee stated "Food Service[:] Cargill $116k fav[orable] – most opportunity here: ranking economic impact you come out 7th. The #1 company is $4.7m fav. I would shoot for being $2.5m fav which would put you competitive with who you are chasing in food service."

102. These individual interactions align with Agri Stats' mission to increase processors' profitability through increased prices and reduced output. Despite managing the exchange of sensitive information between competitors, Agri Stats has no antitrust compliance program. It does not conduct antitrust training for its employees, despite regularly consulting with direct competitors.

VI. AGRI STATS ENTERED INTO ANTICOMPETITIVE AGREEMENTS TO SHARE COMPETITIVELY SENSITIVE INFORMATION WITH PROCESSORS IN THE BROILER CHICKEN, PORK, AND TURKEY INDUSTRIES

103. Agri Stats agreed with the broiler chicken, pork, and turkey processors identified in paragraph 14 above to exchange competitively sensitive information and encouraged processors to use it for the anticompetitive purposes of stabilizing and raising prices and restricting supply. As part of the conspiracy, processors used Agri Stats to exchange competitively sensitive information. The structure of the industries, nature of the information shared, market power of the subscribers, and purpose and effect of the

42

information-sharing scheme confirm that each of these agreements unreasonably restrains

trade.

A. **Agri Stats and its Co-Conspirators Agreed to Share Competitively Sensitive Information**

104. In each of the broiler chicken, pork, and turkey markets, the processors

agreed with Agri Stats and with each other to pay Agri Stats to manage the exchange of

competitively sensitive information among the processors. The Agri Stats broiler chicken

information-exchange conspiracy remains ongoing. Agri Stats paused its pork and turkey

reporting around late 2019, but Agri Stats wants to resume the reporting in the future.

105. Each processor agreed to provide current, competitively sensitive

information to its competitors through Agri Stats, knowing it would receive reports that

included current, competitively sensitive information of its competitors in return. By

entering into an agreement with Agri Stats, each processor also agreed with competing

processors that subscribed to Agri Stats to exchange competitively sensitive information in

the form Agri Stats provided. Each processor ratified these agreements each time it

submitted data to Agri Stats. Tyson internally referred to the decision to participate in Agri

Stats broiler reports as "support[ing] an *industry effort*" (emphasis added).

106. Agri Stats regularly listed current subscribers in presentations when pitching

Agri Stats' services to new and existing clients, leaving no doubt about who was

participating in the information-exchange scheme and warning them that their competitors

would enjoy an advantage if they demurred. New subscribers understood that they would

43

provide competitively sensitive information to current subscribers and receive competitively sensitive information from these current subscribers in return.

107. Agri Stats' "give-to-get" policy reinforced the collective nature of the agreement, and the publication of the participants at the front of every report allowed Agri Stats' subscriber customers to monitor the conspiracy and ensure that if they were providing competitively sensitive information, their competitors were doing so as well. The processors in each of the broiler chicken, pork, and turkey industries understood that the greater the participation in the Agri Stats scheme, the more useful the scheme would become.

B.   The Nature of the Information Collected and Distributed by Agri Stats Has Facilitated the Suppression of Competition Among Processors

108. Agri Stats compiles highly sensitive competitive information that processors would not share directly and redistributes that information in ways that allow processors participating in the scheme to know where they could stabilize and raise prices and when they could restrict production.

109. The information exchanges operated by Agri Stats share several characteristics that enable processors to suppress competition:

a.   Sensitivity: Agri Stats reports competitively sensitive price, output, and cost data that is not otherwise available to processors. Processors can and do deanonymize certain information and link data to particular competitors.

b. <u>Timeliness</u>: Agri Stats' information is current. Its weekly reports generally supply information from the prior week, while its monthly reports include data from the past one-to-two months. Some information is forward-looking and predictive.

c. <u>Detail</u>: Agri Stats provides highly detailed information that allows processors to dampen competition. Agri Stats reports cost and production information on a facility-by-facility and company-by-company basis, allowing processors a detailed look at their competitors' operations. Agri Stats provides price rankings as well as average and top quartile sales prices for products identified at the near-SKU level, allowing processors to see how their sales compare to market prices on a product-by-product basis.

d. <u>Asymmetry</u>: Agri Stats prohibits non-processors from purchasing Agri Stats' information, creating an information asymmetry between processors and purchasers that contributes to higher prices.

C. The Market Power of Agri Stats' Co-Conspirators

110. Collectively, the participating broiler processors (listed in paragraph 14) have market power over the sale of broiler chicken. They have accounted for at least 90% of the broiler chicken market from 2008 to the present. Agri Stats itself has repeatedly estimated that its broiler chicken subscribers made up 98% of the broiler chicken market. Collectively, Agri Stats' broiler processor co-conspirators have the power to restrict output and increase prices in the broiler chicken market.

111. Collectively, the participating pork processers (listed in paragraph 14) had market power over the sale of pork. They have accounted for at least 80% of the pork

market from 2008 to 2019, the time period during which Agri Stats was still issuing pork reports. During this period, Agri Stats repeatedly claimed that it covered 90% of the pork market as measured by number of pigs processed. Collectively, Agri Stats' pork co-conspirators had the market power to restrict output and increase prices in the pork market when Agri Stats was still issuing pork reports. Those same pork processors would collectively have market power today if they resumed their information exchange through Agri Stats.

112.   Collectively, the participating turkey processors (listed in paragraph 14) had market power in the market for the sale of turkey. They have accounted for approximately 90% of the turkey market from at least 2008 until 2018.[23] During this period, Agri Stats repeatedly claimed that it covered 95% of the turkey market. Collectively, Agri Stats' turkey co-conspirators had the power to restrict output and increase prices in the turkey market. Those same turkey processors would collectively have market power today if they resumed their information exchange through Agri Stats.

D.   Agri Stats' Conduct Has the Purpose and Effect of Suppressing Competition, Increasing Prices, and Limiting Supply

113.   Agri Stats understands that its reports have enabled broiler chicken, pork, and turkey processors to stabilize and increase prices and reduce supply. Agri Stats regularly identifies "opportunities" for processors to raise prices or reduce supply by

---

[23] Agri Stats continued producing turkey reports in 2019, but certain large turkey processors no longer participated.

collecting and analyzing the competitively sensitive information provided by processors. Agri Stats refuses to offer its reports to processors' customers.

114.   Agri Stats seeks to profit from its anticompetitive information exchanges. Its customers want a service that will allow them to increase profitability through anticompetitive pricing and output decisions. Thus, Agri Stats has knowingly created a product that allows its subscribers to do just that.

115.   By participating in these anticompetitive information exchanges, Agri Stats and its processor co-conspirators have harmed and continue to harm the competitive process in the broiler chicken, pork, and turkey markets. Rather than allowing the ordinary give and take of the marketplace to determine price and output, Agri Stats and its co-conspirators have distorted each alleged market by asymmetrically sharing competitively sensitive information. In each market, the processor-subscribers used Agri Stats information to stabilize and increase prices or reduce supply or both.

116.   Even standing alone, Agri Stats' agreements with processors allowed them to suppress competition among them. The information provided to processors allowed them to pursue strategies that they likely would not have absent the agreements. Each participating processor could more closely align its prices and output with those of its competitors, harm the competitive process, distort the bargaining and price-setting mechanisms, and suppress competition. A key purpose of Agri Stats' reports is to enable processors to suppress competition, stabilize and increase prices, and reduce supply.

117.   Thus, the effects, probable and actual, of Agri Stats' information-exchange schemes are to stabilize and increase prices, decrease supply, or both, in the broiler chicken, pork, and turkey markets.

118.   There is no legitimate procompetitive justification for Agri Stats' conduct.

VII.   RELEVANT MARKETS

119.   Agri Stats has orchestrated an anticompetitive information-sharing scheme in at least three relevant markets: (i) broiler chicken sold in the United States, (ii) pork sold in the United States, and (iii) turkey sold in the United States.

A.   The Sale of Broiler Chicken in the United States Is a Relevant Market

120.   The sale of broiler chicken meat in the United States is a relevant market. Broiler chicken refers to broiler chicken meat that comes in a variety of forms, fresh or frozen.

121.   Academic estimates show that broiler chicken demand elasticity is low, indicating that there are no close economic substitutes for chicken. Academic estimates for cross-elasticity indicate that pork, turkey, and beef are not close substitutes for chicken.

122.   Consumers find chicken to be distinct from other proteins. Most consumers view chicken as healthier and cheaper than red meats like beef and pork, and they eat chicken in different contexts than turkey, which is generally consumed around the holidays, in ground form, and as deli meat. Turkey is not served in restaurants as often as chicken— a basic fact that turkey processors like Cooper Farms have noted.

123. The broiler chicken conspirators' behavior reflects that they considered the sale of broiler chicken meat to be a relevant market. Agri Stats has produced standard reports for broiler chicken processors to learn highly granular information about their competitors' operations and sales. Agri Stats and EMI have developed and marketed specific services targeted to broiler chicken processors that are not available, for example, to the processors of other meats like turkey. Agri Stats frequently has provided the combined market share for broiler chicken processors that participate in its reports, indicating that Agri Stats believes the sale of broiler chicken is a market.

124. Large protein purchasers have dedicated procurement personnel for chicken (in its various forms). Processors that operate in multiple protein industries, like Tyson, JBS (Pilgrim's), and Perdue, have separate divisions for the sale of chicken. Grocery stores group chicken products separately from pork, turkey, and beef products, reflecting that consumers view the proteins differently.

125. Industry publications and analysts like WATT Poultry consider broiler chicken meat to be a distinct economic unit. Broiler processors and industry publications, including Agri Stats, consider whole bird composite prices to be relevant metrics when assessing prices and demand for broiler chicken.

126. The market for broiler chicken meat is concentrated. The top three processors, Tyson, Pilgrim's, and Sanderson-Wayne, constitute over 50% of the market as measured in pounds of broiler chicken processed. The top ten firms account for 80% of the

market. A 2012 economic analysis prepared for broiler chicken processors described the broiler chicken market as "highly concentrated."

127.   There are high barriers to becoming a broiler processor. The start-up capital necessary to compete with today's broiler chicken processors would be substantial. Broiler chicken processors have large economies of scale, utilizing large and expensive production facilities. For example, Tyson estimated the construction costs of one new broiler chicken complex to be $320 million in 2017. Without those economies of scale, it would be extremely difficult to compete. Broiler chicken processors tend to be vertically integrated, meaning a single company controls most aspects of the supply chain. To compete effectively, a new entrant would need hundreds of millions of dollars, substantial "know how," and an opportunity to negotiate with large broiler chicken purchasers. A new company fitting these criteria will be rare.

128.   Broiler chicken is a commodity. The broiler chicken meat of one processor, like Tyson, is highly interchangeable with—if even distinguishable from—the broiler chicken meat of another processor, like Pilgrim's. In commodity markets, firms compete primarily on price, as opposed to quality or some other form of product differentiation.

129.   In sum, the broiler chicken market has characteristics that make information exchanges more likely to be anticompetitive. The broiler chicken market has relatively few competitors. Broiler chicken is a fungible, commodity product subject to inelastic demand. The barriers to entry in the broiler chicken market are very high.

50

B.   The Sale of Pork in the United States Is a Relevant Market

130.   The sale of pork in the United States is a relevant market. Pork refers to pig meat that can come in a variety of forms, including fresh or frozen.

131.   Pork does not have any close economic substitutes. Academic estimates show that pork demand elasticity is low, indicating that there are no close economic substitutes for pork. Academic estimates for cross-elasticity indicate that chicken, turkey, and beef are not close substitutes for pork.

132.   Consumers find pork to be distinct from other proteins. Consumers purchase less pork than chicken or beef and tend to value pork more for its taste than its health benefits or cost. Pork consumption has remained mostly flat since the 1970s.

133.   The pork conspirators' behavior shows that they considered pork to be a relevant market. Agri Stats has produced standard reports to enable pork processors to learn highly granular information about their competitors' operations and sales. Agri Stats and EMI have developed and marketed specific services targeted to pork processors that are not available to, for example, the producers of other meats like beef. Agri Stats frequently has provided the market shares of the pork processors that subscribe to its services, indicating that Agri Stats believes it is a distinct market. Pork processors frequently have referred to a "pork market."[24]

---

[24] For example, Tyson CEO Donnie Smith stated in a 2016 earnings call: "The wholesale pork market has moved up and chicken has not moved up near as fast as the wholesale pork market."

134.   Large protein purchasers have dedicated procurement personnel for pork. Processors that operate in multiple protein industries, like Tyson, JBS, and Perdue, have separate divisions for the sale of pork. Grocery stores group pork products separately from chicken, turkey, and beef products, reflecting that consumers view the proteins differently.

135.   Pork processors and industry publications, including Agri Stats, view the pork "cutout" value to be a relevant metric when assessing prices and demand for pork. The pork cutout value (often referred to as the Pork Carcass Cutout) indicates the average value of a hog carcass based on the average prices received for the various cuts of pork produced during a given period of time.

136.   Pork is a concentrated market. The top three pork processors, Smithfield, JBS, and Tyson, make up over 60% of the market as measured by slaughter capacity.[25] The top ten processors make up nearly 90% of the market. Pork processor Triumph stated internally that "the US pork processing industry is highly concentrated, with the top ten processors representing over 88.3% of the total federally inspected industry capacity as of late 2010." Since then, the industry has become more concentrated.

137.   There are high barriers to becoming a pork processor. The start-up capital necessary to compete with today's pork processors would be substantial. Pork processors have large economies of scale, utilizing large and expensive processing facilities. Without those economies of scale, it would be extremely difficult to compete. The estimated cost

---

[25] Slaughter capacity is a typical method of measuring pork processor market shares.

of constructing a large pork processing facility today is approximately $500 million. Many pork processors are vertically integrated, a trend that has been increasing in recent years. To compete effectively, a new entrant would need hundreds of millions of dollars, substantial "know how," and an opportunity to negotiate with large pork purchasers. A new company meeting these criteria will be rare.

138.   Pork is a commodity. The pork of one processor is highly interchangeable with the pork of another processor. The pork processors themselves acknowledge that pork is a commodity. An internal document from Triumph stated that "[t]he wholesale pork market is first and foremost a commodity market, defined as a market where the products of all sellers are very similar, and price will tend to fluctuate depending on available supplies and level of interest . . . . In most cases, the wholesale pork marketplace is best summed up with the statement, 'Pork is pork.'" Smithfield's former Senior Manager of Pricing acknowledged that it is not possible to differentiate a processor's pork once packaging is removed.

139.   In sum, the pork market has characteristics that make information exchanges more likely to be anticompetitive.

C.   The Sale of Turkey in the United States Is a Relevant Market

140.   The sale of turkey in the United States is a relevant market. Turkey refers to turkey meat that comes in a variety of forms, fresh or frozen.

141. Academic estimates show that turkey demand elasticity is low, indicating that there are no close economic substitutes for turkey. Academic estimates for cross-elasticity indicate that chicken, pork, and beef are not close substitutes for turkey.

142. Consumers find turkey to be distinct from other proteins. Consumption of turkey grew considerably in the 1970s and 1980s and has remained relatively flat since. Consumers typically view turkey as a healthier, lower-fat protein than red-meat alternatives, but purchase turkey in fewer contexts than chicken. A large percentage of turkey is consumed during holidays (particularly Thanksgiving) as whole-birds; otherwise, consumers tend to purchase turkey in ground form or as deli meat.

143. The turkey conspirators' behavior reflects that they considered the sale of turkey to be a relevant market. Agri Stats' reports have grouped turkey processors together for comparison. Agri Stats and EMI have developed and marketed specific services targeted to turkey processors that they did not make available to processors of other meats, like chicken. Agri Stats frequently has referenced the collective market share of the turkey processors that subscribed to its turkey reports, indicating that Agri Stats believes it is a distinct market.

144. Processors that operate in multiple protein industries, like Tyson and Perdue, have separate divisions for the sale of turkey. Grocery stores group turkey products separately from chicken, pork, and beef products, reflecting that consumers view the proteins differently.

145.   Industry publications like WATT Poultry also consider turkey to be a separate economic market. Turkey processors and industry publications, including Agri Stats, use composite whole bird prices as relevant metrics for assessing price and demand of turkey.

146.   The turkey market is concentrated. The top four processors, Butterball, Jennie-O, Cargill, and Farbest, make up over 50% of the market as measured by live pounds processed. The top ten turkey processors make up over 80% of the market.

147.   There are high barriers to becoming a turkey processor. The start-up capital necessary to compete with today's turkey processors would be substantial. Turkey processors have large economies of scale, utilizing large and expensive production facilities. For example, Prestage Farms estimated the construction costs of one new turkey processing facility to be $150 million in 2021. Without those economies of scale, it would be difficult to compete.

148.   Turkey processors tend to be vertically integrated. To compete effectively, a new entrant would need hundreds of millions of dollars, substantial "know how," and an opportunity to negotiate with large turkey purchasers. A new company meeting these criteria will be rare.

149. Turkey is a commodity. The turkey of one processor is highly interchangeable—if even distinguishable—with the turkey of another processor. The turkey processors, along with industry analysts, refer to turkey as a commodity. For example, in an internal strategy document, Cargill refers to turkey as a "commodity

business." Butterball noted internally that "Overall, RETAILERS do not see our product differentiation as meaningful. . . [,]" because turkey products, like turkey bacon, are interchangeable regardless of brand.

150.   In sum, the turkey market has characteristics that make information exchanges more likely to be anticompetitive.

D.   Geographic Market

151.   The United States is a relevant geographic market for the sale of broiler chicken, pork, and turkey. Agri Stats, the processors, courts, and industry specialists all analyze these meat markets on a national basis. Imports into the United States for each of these meats are minimal, with less than 1% of domestic broiler and turkey production imported and around 3% of domestic pork imported. Sales of these proteins in the United States must comply with U.S. law.

VIII.   JURISDICTION, VENUE, AND COMMERCE

152.   The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Agri Stats from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

153.   The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), 1345.

154.   The Court has personal jurisdiction over Agri Stats; venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 because Agri Stats transacts business and is found within this District.

155. Multiple co-conspirator processors are headquartered in this District, including Hormel, which is headquartered in Austin, Minnesota and has been an Agri Stats pork and turkey subscriber, and Jennie-O, which is also headquartered in Austin, Minnesota and has been an Agri Stats turkey subscriber. Hormel has also received EMI reports.

156. Gold'n Plump Poultry, an Agri Stats broiler subscriber until 2016, was headquartered in St. Cloud, Minnesota and operated a broiler processing facility in Cold Spring, Minnesota. In 2016, Pilgrim's, an Agri Stats subscriber, purchased Gold'n Plump, including the Cold Spring facility. Pilgrim's now exchanges information with Agri Stats regarding that Minnesota-based facility.

157. Sparboe Farms is also a current Agri Stats egg subscriber headquartered in Litchfield, Minnesota.

158. Agri Stats has executed contracts with Hormel and Jennie-O for which the governing law, jurisdiction, and venue is Minnesota. Agri Stats has given in-person presentations in Minnesota, including an in-person pitch to Hormel in which Agri Stats listed every Agri Stats subscriber in all proteins.

159. Agri Stats has sent its reports to processors located in Minnesota in the broiler chicken, pork, and turkey industries. Agri Stats' conduct has harmed the United States markets for broiler chicken, pork, and turkey, which includes harm in Minnesota.

160.   The broiler chicken, pork, and turkey markets are national markets, and Agri

Stats' and its co-conspirators' conduct have substantially affected interstate commerce in

each of the broiler chicken, pork, and turkey markets.

IX. VIOLATIONS ALLEGED

A.   Count 1: Sherman Act Section 1 – Anticompetitive Information Exchange Harming Broiler Chicken Market

161.   The United States repeats and realleges each and every paragraph in this

Complaint as if fully set forth herein.

162.   Since at least 2008, Agri Stats and its broiler chicken processor co-

conspirators have agreed with each other to exchange competitively sensitive information

regarding prices, output, and costs. These agreements have unreasonably restrained trade,

suppressed competition, and had the actual and likely effect of stabilizing and increasing

prices and reducing output in the United States broiler chicken market, in violation of

Section 1 of the Sherman Act, 15 U.S.C. § 1.

B.   Count 2: Sherman Act Section 1 – Anticompetitive Information Exchange Harming Pork Market

163.   The United States repeats and realleges each and every paragraph of this

Complaint as if fully set forth herein.

164.   Since at least 2008, Agri Stats and its pork processor co-conspirators have

agreed with each other to exchange competitively sensitive information regarding prices,

output, and costs. These agreements have unreasonably restrained trade, suppressed

competition, and had the actual and likely effect of stabilizing and increasing prices and

reducing output in the United States pork market, in violation of Section 1 of the Sherman

Act, 15 U.S.C. § 1.

C. Count 3: Sherman Act Section 1 – Anticompetitive Information Exchange Harming Turkey Market

165. The United States repeats and realleges each and every paragraph of this

Complaint as if fully set forth herein.

166. Since at least 2008, Agri Stats and its turkey processor co-conspirators have

agreed with each other to exchange competitively sensitive information regarding prices,

output, and costs. These agreements have unreasonably restrained trade, suppressed

competition, and had the actual and likely effect of stabilizing and increasing prices and

reducing output in the United States turkey market, in violation of Section 1 of the Sherman

Act, 15 U.S.C. § 1.

X. REQUESTED RELIEF

167. Agri Stats' business model centers on the recruitment of competitors in

various agricultural protein industries to participate in anticompetitive information

exchanges. This conduct has stabilized and increased prices and reduced output for staple

meat items.

168. Accordingly, the United States requests that this Court:

    a. rule that Agri Stats' and its broiler co-conspirators' anticompetitive

information exchange has unreasonably restrained trade and is unlawful under

Section 1 of the Sherman Act, 15 U.S.C. § 1;

b.   rule that Agri Stats' and its pork co-conspirators' anticompetitive information exchange has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

c.   rule that Agri Stats' and its turkey co-conspirators' anticompetitive information exchange has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

d.   permanently enjoin Agri Stats and EMI from facilitating the exchange of sensitive information;

e.   permanently enjoin Agri Stats and EMI from continuing to engage in the anticompetitive practices described herein and from engaging in any other practices with the same purpose and effect as the challenged practices;

f.   grant other relief as required by the nature of this case and as is just and proper to prevent the recurrence of the alleged violations and to dissipate their anticompetitive effects; and

g.   award the United States the costs of this action; and award such other relief to the United States as the Court may deem just and proper.

Dated this 28th day of September, 2023

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA,

/s/ Jonathan S. Kanter
JONATHAN S. KANTER
Assistant Attorney General for Antitrust

/s/ Doha Mekki
DOHA MEKKI
Principal Deputy Assistant Attorney
General for Antitrust

/s/ Michael B. Kades
MICHAEL B. KADES
Deputy Assistant Attorney General for
Antitrust

/s/ Brian R. Young
BRIAN R. YOUNG
Acting Director of Litigation

/s/ Ryan Danks
RYAN DANKS
Director of Civil Enforcement

/s/ Miriam R. Vishio
MIRIAM R. VISHIO
Deputy Director of Civil Enforcement

/s/ Daniel S. Guarnera
DANIEL S. GUARNERA
Chief, Civil Conduct Task Force

/s/ Kate M. Riggs
KATE M. RIGGS
Acting Assistant Chief, Civil Conduct Task
Force

/s/ Ann. M. Bildtsen
ANN M. BILDTSEN
Attorney ID No. 027149
First Assistant United States Attorney
Attorney for the United States Acting
Under Authority Conferred by
28 U.S.C. § 515

/s/ Liles H. Repp
LILES H. REPP
Attorney ID No. 0400692
Assistant United States Attorney
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Phone: (612) 664-5600
Fax: (612) 664-5788
Email: Liles.Repp@usdoj.gov

/s/ Mark H.M. Sosnowsky
MARK H.M. SOSNOWSKY*
EUN-HA KIM
    Senior Litigation Counsel

/s/ William M. Friedman
WILLIAM M. FRIEDMAN*
JAMES H. CONGDON*
SILVIA DOMINGUEZ-REESE*
PETER A. NELSON*
    Trial Attorneys

United States Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 8600
Washington, DC 20530

Tel: 202-598-6490
Fax: 202-598-8331
Mark.Sosnowsky@usdoj.gov
William.Friedman2@usdoj.gov
James.Congdon@usdoj.gov
Silvia.Dominguez-Reese2@usdoj.gov
Peter.Nelson@usdoj.gov

* pro hac vice forthcoming

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Liles H. Repp, U.S. Attorney's Office for the District of Minnesota, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, (612) 664-5600

DEFENDANTS

Agri Stats, Inc.

County of Residence of First Listed Defendant **Allen County, Indiana**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Justin W. Bernick, Hogan Lovells US LLP, 555 Thirteenth Street, NW., Washington, DC 20004, (202) 637-5485

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [X] 1 U.S. Government Plaintiff
- [ ] 2 U.S. Government Defendant
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 Insurance [ ] 120 Marine [ ] 130 Miller Act [ ] 140 Negotiable Instrument [ ] 150 Recovery of Overpayment & Enforcement of Judgment [ ] 151 Medicare Act [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans) [ ] 153 Recovery of Overpayment of Veteran's Benefits [ ] 160 Stockholders' Suits [ ] 190 Other Contract [ ] 195 Contract Product Liability [ ] 196 Franchise	**PERSONAL INJURY** [ ] 310 Airplane [ ] 315 Airplane Product Liability [ ] 320 Assault, Libel & Slander [ ] 330 Federal Employers' Liability [ ] 340 Marine [ ] 345 Marine Product Liability [ ] 350 Motor Vehicle [ ] 355 Motor Vehicle Product Liability [ ] 360 Other Personal Injury [ ] 362 Personal Injury - Medical Malpractice	**PERSONAL INJURY** [ ] 365 Personal Injury - Product Liability [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability [ ] 368 Asbestos Personal Injury Product Liability **PERSONAL PROPERTY** [ ] 370 Other Fraud [ ] 371 Truth in Lending [ ] 380 Other Personal Property Damage [ ] 385 Property Damage Product Liability	[ ] 625 Drug Related Seizure of Property 21 USC 881 [ ] 690 Other	[ ] 422 Appeal 28 USC 158 [ ] 423 Withdrawal 28 USC 157 **INTELLECTUAL PROPERTY RIGHTS** [ ] 820 Copyrights [ ] 830 Patent [ ] 835 Patent - Abbreviated New Drug Application [ ] 840 Trademark [ ] 880 Defend Trade Secrets Act of 2016	[ ] 375 False Claims Act [ ] 376 Qui Tam (31 USC 3729(a)) [ ] 400 State Reapportionment [X] 410 Antitrust [ ] 430 Banks and Banking [ ] 450 Commerce [ ] 460 Deportation [ ] 470 Racketeer Influenced and Corrupt Organizations [ ] 480 Consumer Credit (15 USC 1681 or 1692) [ ] 485 Telephone Consumer Protection Act [ ] 490 Cable/Sat TV [ ] 850 Securities/Commodities/ Exchange
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**	**LABOR**	[ ] 890 Other Statutory Actions
[ ] 210 Land Condemnation [ ] 220 Foreclosure [ ] 230 Rent Lease & Ejectment [ ] 240 Torts to Land [ ] 245 Tort Product Liability [ ] 290 All Other Real Property	[ ] 440 Other Civil Rights [ ] 441 Voting [ ] 442 Employment [ ] 443 Housing/ Accommodations [ ] 445 Amer. w/Disabilities - Employment [ ] 446 Amer. w/Disabilities - Other [ ] 448 Education	**Habeas Corpus:** [ ] 463 Alien Detainee [ ] 510 Motions to Vacate Sentence [ ] 530 General [ ] 535 Death Penalty **Other:** [ ] 540 Mandamus & Other [ ] 550 Civil Rights [ ] 555 Prison Condition [ ] 560 Civil Detainee - Conditions of Confinement	[ ] 710 Fair Labor Standards Act [ ] 720 Labor/Management Relations [ ] 740 Railway Labor Act [ ] 751 Family and Medical Leave Act [ ] 790 Other Labor Litigation [ ] 791 Employee Retirement Income Security Act **SOCIAL SECURITY** [ ] 861 HIA (1395ff) [ ] 862 Black Lung (923) [ ] 863 DIWC/DIWW (405(g)) [ ] 864 SSID Title XVI [ ] 865 RSI (405(g)) **FEDERAL TAX SUITS** [ ] 870 Taxes (U.S. Plaintiff or Defendant) [ ] 871 IRS—Third Party 26 USC 7609 **IMMIGRATION** [ ] 462 Naturalization Application [ ] 465 Other Immigration Actions	[ ] 891 Agricultural Acts [ ] 893 Environmental Matters [ ] 895 Freedom of Information Act [ ] 896 Arbitration [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [X] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Sherman Act, 15 U.S.C. § 1

Brief description of cause:
Suit to enjoin defendant from operating unlawful information exchanges among competitors in violation of Section 1 of the Sherman Act.

VII. REQUESTED IN COMPLAINT:

- [ ] CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [X] No

VIII. RELATED CASE(S) IF ANY

(See instructions):
JUDGE Judge John R. Tunheim
DOCKET NUMBER 0:18cv1776

DATE	SIGNATURE OF ATTORNEY OF RECORD
September 28, 2023	s/ Liles Repp

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.